IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 656 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-12-2000 in WP NO : 18500 OF 1999 on the file of the High Court.)

Between:

1 Government of Andhra Pradesh, Rep. by its Secretary,

Education Department, Secretariat, Hyderabad.
2 Government of Andhra Pradesh, Rep. by its Secretary, Finance

& Planning,Secretariat, Hyderabad.
3 Commissioner of Collegiate Education, Andhra Pradesh,
Hyderabad.

..... APPELLANTS

AND

1 M.S.Bhagyamma, A.K.N.Womens College, R/o.3-5-989,
Narayanaguda, Hyderabad.
2 Amrat Kapadia Navajivan Women's College, Rep. by its

Secretary-cum-Correspondent, Ramkoti, Hyderabad.
(R2 is not my party in this Appeal)

RESPONDENTS

Counsel for the Appellants: GP FOR EDUCATION

Counsel for the Respondents: MR.SADU RAJESWARA REDDY

The Court made the following:

JUDGMENT : (Per the Honourable Sri Justice S.Ananda Reddy)

This writ appeal is at the instance of the Government aggrieved by the order of the learned single Judge in W.P. No: 18500 of 1999 allowing the writ petition directing the respondents-appellants herein to regularise the services of the writ petitioner from 25.11.1993 with all consequential benefits viz., seniority and other attendant benefits including the terminal benefits like pension.

The appellants herein are the writ respondents-1 to 3. The grievance of the appellants is that there was no regular vacancy in the college for the writ petitioner-1st respondent who was engaged as a contingent employee i.e., sweeper and in the absence of regular vacancy, the direction issued by this Court for regularization of her services from 25-11-1993 is illegal and without jurisdiction and the appellants are incapable of implementation of the said order apart from being contrary to the Government order in G.O.Ms.No.212.

The learned Government Pleader for the appellants also contended that G.O.Ms.No.212 can be applied for the regularization of services of contingent employees who have completed five years of regular continuous service subject to the availability of a clear vacancy. In the absence of any clear vacancy, the writ petitioner is not entitled to the benefits as was granted by the learned single Judge.

The learned counsel appearing for the writ petitioner, however, sought to contend that the writ petitioner was appointed as a sweeper in the year 1985 and has been working on a meagre consolidated pay. Therefore, the writ petitioner is entitled not only for the benefit of regularization of her services but also for the payment of regular scale of pay attached to the post of sweeper. But, with reference to the vacancy position, the learned counsel would not dispute as the material papers filed at page 46 go to show that there is one vacancy of sweeper which has arisen as a result of the retirement of Smt.Shahanaz Ahmed. In view of the said fact that the regular vacancy has arisen only as a result of the retirement of the existing incumbent on 31.12.2003, the writ petitioner may be entitled for regularization in terms of G.O.Ms.No.212 from the date of regular vacancy only.

The learned counsel appearing for the Management-2nd respondent -College represented that the vacancy had arisen only as a result of retirement of Smt.Shanaz Ahmed who worked as sweeper and retired in December, 2003 and the case of the writ petitioner may be considered against the said vacancy.

Heard the learned counsel for the parties and also gone through the order of the learned single Judge.

Though the learned single Judge gave a direction for implementation of G.O.Ms.No:212 with a further direction to regularise the services of the writ petitioner from 25.11.1993, but there is no finding as to the existing vacancy as on that date. In view of the absence of a regular vacancy as on 25.11.1993, the direction issued by the learned single Judge, is impossible for implementation.

However, in the facts and circumstances of the case and in view of arising of the regular vacancy in December, 2003 as a result of retirement of one Smt.Shanaz Ahemd, We modify the order of the learned single Judge to the extent that the appellants shall consider the claim of the writ petitioner for regularization from the date on which a regular vacancy has arisen in the category of sweeper and accordingly regularize her services with effect from 1-1-2004. The appellants are also directed to grant all other consequential benefits to which the writ petitioner is entitled in accordance with the rules within a period of six (6) weeks from the date of receipt of copy of this order.

Accordingly, the appeal is allowed in part modifying the order impugned to the extent indicated above.

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Justice T.Meena Kumari

_____ Justice S.Ananda Reddy

Date: 19th January, 2005.

Dvs/gurc

Copies to:

1 The Secretary, Education Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
2 The Secretary, Finance & Planning, The Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad.

4. Two CCs to the GP for Education, High Court Buildings, Hyderabad.

5. Two CD copies.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI

&

HONOURABLE SRI JUSTICE S.ANANDA REDDY

W.A.No.656 of 2002

(Judgment delivered by the Honourable

Sriz` Justice S.Ananda Reddy)

19th January, 2005